WP(C) 4216/2006
BEFORE
THE HON'BLR MR JUSTICE HRISHIKESH ROY
Heard Mr AK Goswami, learned senior counsel for the petitioner Society; Mr MK Choudhury, learned senior counsel for the respondent No.4 and also Ms R. Chakraborty, learned State counsel.

2. This case pertains to settlement of No.18 Bondajan Fishery, hereinafter referred to as the Fishery, for which Notice Inviting Tender(NIT) dated 15.6.2006 was issued by the Deputy Commissioner(Metro), Kamrup requiring the tenderers to give their offers in sealed envelopes for consideration of settlement of the Fishery for a period of 7(seven) years.

3. The settlement of the Fishery is made under the provisions of Rule 12 of the Assam Fishery Rules, 1953, hereinafter referred to as the Rules, whereby it is provided that settlement is to be made by the Government by tender system. It is further provided that the Government can make settlement, inter alia with self-help groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned.

4. The conditions incorporated in the NIT are in consonance with the aforesaid requirement of Rule 12 and, in the NIT also, it is provided that settlement could be made with, inter alia, self-help group consisting of actual fishermen residing by the bank of the fishery.

5. Mr AK Goswami, learned senior counsel appearing for the petitioner submits that the petitioner Society is a registered fishery comprising of 100% actual fishermen and fishing is the only livelihood of the members of the society. It is further contended that the petitioner society is located in the neighbourhood of the subject Fishery.

6. The settlement order dated 19.8.2006 made in favour of respondent No.4 self-help group namely Rajabari Matshyajibi Atma Sahayak Got has been challenged by the petitioner inter alia on the ground that the said self-help group is not constituted by 100% actual fishermen. Attention of this court is drawn to the Memorandum of the Samiti annexed with the affidavit-in-reply as Annexure-A dated 8.9.2006 filed on behalf of the petitioner to show that Bishnu Ram Das and Sanjib Das, Secretary and Treasurer of the respondent No.4 self-help group have described themselves as businessmen.

6.1 Accordingly, it is contended on behalf of the petitioner that from the declaration made by the office bearers of respondent No.4, it can be inferred that the respondent No.4 is not constituted by the 100% actual fishermen and, accordingly, the said group could not have been considered for settlement of the Fishery in terms of the provisions of Rule 12 of the Rules as well as the conditions incorporated in the NIT dated 15.6.2006.

7. It is further contended on behalf of the petitioner that no document certifying that the respondent No.4 group is located in the neighbourhood of the Fishery has been made available and, on this ground also, the impugned settlement order is liable to be interfered with.

7.1 It is further contended that in the bid, the respondent No.4 has indicated their offer under the heading 'revenue' as Rs.75,000/- only, and accordingly, they have failed to adhere to the requirement under Rule 12 of the Rules as well as the conditions incorporated in the NIT and on this ground alone there could not have been any consideration in respect of the offer of the respondent No.4 group. A further submission is made with regard to registration of respondent No.4 group on 27.6.2006, much after the issuance of the NIT on 15.6.2006 and it is contended that, at least on the day of the NIT, the respondent No.4 group could

not have been said to be in existence to enable consideration of their offer.

8. Mr MK Choudhury, learned senior counsel appearing for the respondent No. 4, on the other hand, submits that in so far as the declaration made by the Secretary and Treasurer of the respondent No.4 group describing themselves as businessmen at the time of registration of the society is concerned, the said declaration was made only because the said two persons also had a petty business, but actually, both of them are fishermen and should be considered eligible to be a part of the respondent No.4 group to meet the requirements of the NIT and Rule 12 of the Rules.

9. It is further submitted by the learned counsel appearing for the respondent No.4 that even the Secretary of the petitioner society is a film producer and should not be considered to be an actual fisherman and if the offer made by the respondent No.4 is to be considered ineligible on the grounds urged on behalf of the petitioner, the same ground could also be put to use to declare disentitlement of the petitioner to obtain settlement in terms of the requirement of the NIT and Rule 12 of the Rules.

10. As regards the contention made that no certificate was made available declaring the location of the respondent No.4 group to be within the neighbourhood of the Fishery, it is submitted that the authorities have taken note of the relevant consideration and there could not have been any disentitlement of the respondent No.4 group for settlement on the ground of non-furnishing of such certificate.

11. As regards the contention of respondent No.4 group having got itself registered only on 27.6.2006, 12 days after the NIT dated 27.6.2006, it is submitted by Mr Choudhury that the respondent No.4 group has been functioning prior to the date of the tender notice and got itself registered as a self-help group on 27.6.2006 only to have a recognition as a registered group.

12. It is further contended on behalf of respondent No.4 that the settlement has been made at their offer of Rs.75,000/- for the first year and 10% increase for subsequent years and this offer is far above the offer of Rs.33,000/- made by the petitioner society and in view of the higher revenue that is to be earned by granting settlement in favour of respondent No.4, the interest of the revenue is protected and no interference is called for with the impugned settlement order dated 19.8.2006.

13. The relevant records pertaining to the settlement have been made available by Ms R. Chakraborty, learned State counsel for perusal of the court. It appears from the records produced that on behalf of respondent No.4 group, all the requisite steps are being taken by Bishnu Ram Das, the Secretary of the said group.

14. Amongst the documents appended to the tender submitted by the respondent No.4, a certificate dated 28.6.2006 given by the Circle Officer, Panikhaity in respect of Bishnu Ram Das, the Secretary of the Tenderer group indicates that he has ’experience of fishing’, but the said certificate does not indicate him to be an actual fisherman.

14.1 It is already contended on behalf of the petitioner that in the Memorandum of the respondent No.4 Samity, Bishnu Ram Das, Secretary has himself described his occupation as businessman and not as actual fisherman.

14.2 However, what is noteworthy is that neither of the above issues pertaining to the vocation of the Secretary as well as Treasurer of the respondent No.4 group, appear to have been considered by the settling authority, as is revealed by the records produced before this court.

15. In view of what is noticed above, this court is of the opinion that in so far as conditions incorporated in the NIT as well as in Rule 12 of the Rules pertaining to giving settlement inter alia to self-help group consisting of 100% actual fishermen in the 'neighbourhood of the fishery are concerned, do not appear to have been taken note of by the settling authority. This was however a very relevant consideration for settlement.

16. In view of above deficiency noticed in the settlement process, this court is of the view that the settling authority had not taken note of relevant consideration while making the settlement and had proceeded to make settlement in favour of respondent No.4 only on the basis of higher bid furnished by the said group without considering as to whether the said self-help group fulfills the requirement of Rule 12 of the Rules as well as the conditions incorporated in the NIT.

17. In view of above, the impugned order dated 19.8.2006 settling the No.18 Bondajan Fishery with respondent No.4 is liable to be interfered with. Accordingly, the matter is remanded back to the settling authority for fresh consideration in accordance with the provisions of Rule 12 of the Rules. Upon such consideration, keeping in mind the relevant criterion as noticed above, the settling authority would pass fresh orders of settlement.

17.1 The fresh consideration would be made by the settling authority within a period of two months from today. The respondent No.4 may be permitted to continue with fishing in the Fishery in terms of the impugned settlement order, till a fresh decision is taken by the settling authority. However, it is made clear that no fishing by respondent No.4 on the strength of the impugned settlement order dated 19.8.2006 shall be permitted beyond two months from today, by which period the settling authority would be expected to take decision afresh in terms of the present order.

18. In view of what is stated above, the petition stands disposed of. No costs.